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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL ASSIGNEE'S REPORT NO.2 OF 2007
IN
INSOLVENCY PETITION NO.26 OF 2006

Re.: .
Mittersain Rupchand & Ors. ...Debtors/Insolvents

Ex-Parte: .
Union Bank of India ...Petitioning Creditor

Mr.P.V. Shah, Advocate, for the Petitioning Creditor.
Mr.Kishore Jain, Advocate, for the Official Assignee.
Mr.Rishit P. Basrani, Advocate, i/b. Nagemdhi Shah & Himaytullah, for Vijaya Bank. .
Mr.Y.C. Parikh, Official Assignee, present.

CORAM : ABHAY S. OKA, J.
DATED : 16TH OCTOBER, 2007.

P.C.:

1. It is stated that the Official Assignee has recovered substantial amount from the assets of the insolvent. There is an application dated 26th August, 2005 made by Union Bank of India in the original Application No.143 of 2001 before the Debt Recovery Tribunal No.1 at Bombay seeking a direction against the Official Assignee to deposit the decretal amount in terms of the recovery certificate issued by the Debt Recovery Tribunal from the estate of the Debtor No.1. The Official Assignee has already appointed a Counsel to represent him before the Debt Recovery Tribunal. I am informed that even a reply has been filed to the said application.

2. The submission made by the learned Counsel appearing for the Official Assignee is that the Debt Recovery Tribunal has no jurisdiction to issue any directions against the Official Assignee in view of the provisions of the Presidency Towns Insolvency Act, 1909. It is submitted that even assuming that the Debt Recovery Tribunal has any jurisdiction to issue a direction against the Official Assignee, the same cannot be done without the leave of this Court.

3. The learned Counsel appearing for Union Bank of India submitted that the Official Assignee was a party to the proceedings in which the order of recovery has been passed and, therefore, the Debt Recovery Tribunal has jurisdiction to entertain the application dated 26th August, 2005 made by the Union Bank of India.

4. The Official Assignee has already taken steps to contest the application dated 26th August, 2005. The appearance of the Official Assignee before the Debt Recovery Tribunal is obviously without prejudice to the contention that the Debt Recovery Tribunal has no jurisdiction to issue any directions against the Official Assignee. As of today, the application dated 26th August, 2005 is not disposed of. As of today, there is no direction issued by the Debt Recovery Tribunal against the Official Assignee for payment of any amount.

5. It will be open for the Official Assignee to raise all contentions before the Debt Recovery Tribunal including the contention regarding lack of jurisdiction to issue directions to the Official Assignee. It is obvious that the Debt Recovery Tribunal is bound to consider all the contentions which may be raised by the Official Assignee before passing any order on application dated 26th August, 2005.

6. Hence for the time being no directions are required to be issued on this report. This report shall be placed before this Court for further consideration on 4th December, 2007. If any adverse order is passed against the Official Assignee by the Debt Recovery Tribunal, it will be open for the Official Assignee to move this Court earlier.

7. At this stage, the learned Counsel appearing for the petitioning-creditor pointed out that there is a lot of jewellery and other movables in the custody of the Official Assignee. The Official Assignee states that necessary report will be submitted for disposal of the said property.

[ABHAY S. OKA, J.]